

**IN THE COMMON PLEAS COURT
MONTGOMERY COUNTY, OHIO**

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO.: 2019 CV 05444
	:	Judge Richard Skelton
Plaintiffs,	:	
	:	
v.	:	
	:	
DARREN POWLETTE et al,	:	
	:	
Defendants.	:	

**PLAINTIFF MIAMI TOWNSHIP BOARD OF TRUSTEES' REPLY IN SUPPORT OF
ITS MOTION TO COMPEL DEFENDANTS DARREN POWLETTE AND STONEY
HILL RUSTIC WEDDINGS LLC, TO PROVIDE RESPONSES TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

Now comes Plaintiff, Miami Township Board of Trustees, by and through counsel, and hereby submits its Reply in Support of its Motion to Compel Defendant Darren Powlette and Defendant Stoney Hill Rustic Weddings, LLC, (collectively "Defendants") to fully respond to Plaintiff's First Set of Interrogatories and Request for Production of Documents served upon Defendants by Plaintiff, pursuant to Ohio Civ.R. 37, and its request that this Court sanction Defendants and order that Defendants pay the fees and costs for the preparation and filing of this motion.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

/s/ Edward J. Dowd

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MEMORANDUM IN SUPPORT

I. LAW AND ARGUMENT

Defendants argue that the Court should deny the Plaintiff's Motion to Compel or in the alternative:

tailor the required responses so that only evidence, reasonably calculated to lead to the discovery of admissible evidence, be discovered, and that only those documents in the "possession, custody or control" of the Defendants be produced and the manner in which such documents or other evidence can be used by the Plaintiff.

(Defendants' Memorandum in Opposition P. 2.) Defendants appear to incorrectly believe that *they* get to determine what evidence is reasonably calculated to lead to the discovery of admissible evidence, however, the admission or exclusion of relevant evidence is within the sound discretion of the trial court. *Block Commc'ns, Inc. v. Pounds*, 2015-Ohio-2679, 34 N.E.3d 98. The trial court has broad discretion in regulating the discovery process and, therefore, the trial court's decisions on discovery matters will not be reversed absent an abuse of discretion. *Kelley v. Ford Motor Credit Co.* (2000), 137 Ohio App.3d 12, 18, 738 N.E.2d 9. Further, the party opposing a discovery request has the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence. *State ex rel. Fisher v. Rose Chevrolet, Inc.* (1992), 82 Ohio App.3d 520, 612 N.E.2d 782. Defendants have made no *substantive* argument beyond stating that the Plaintiff's requests will not lead to admissible facts or evidence. Finally, matters are exempt from discovery only if the matter is privileged or is totally irrelevant to the subject matter of the inquiry. *Mut. of Omaha Ins. Co. v. Garrigan* (1971), 31 Ohio Misc. 1, 60 O.O.2d 29, 285 N.E.2d 395. It is the objecting party's burden to clearly show that the information sought is privileged or not relevant. *Id.* The relevancy test for purposes of discovery has been given a very liberal construction. *Stokes v. Lorain Journal Co.* (1970), 26 Ohio Misc. 219, 55 O.O.2d 363, 266 N.E.2d 857. The concept of relevancy as it

applies to discovery is not to limit it to the issues in the case, but to the subject matter of the action, which is a broader concept. *Block Commc'ns, Inc.* at 2679.

In this matter the objecting Defendants have not clearly shown that the information sought is irrelevant or privileged. Further, the Plaintiff has agreed to a protective order related to any document the Plaintiff deems to be of confidential nature for the entities or their clients. Defendants have not sought a judicial review of the documents requested, and have taken no affirmative steps in trying to limit their production, save for stonewalling. The Plaintiff has attempted to work with Defendants by agreeing to the protective order as to certain documents that it has sought production of, yet this has not lead to the production of these documents, but further objections and delays. It appears Defendants are insistent on attempting to delay discovery in this action to prevent Plaintiff from being able to prove its case as evidenced by the failure to appropriately respond to discovery and by Defendants' counsel's failure to appear by telephone for numerous status conferences related to the resolution of this issue.

Further, Plaintiff is only trying to ascertain whether Defendants are engaging in agritourism or if Defendants are in fact running an unauthorized wedding venue which has failed to meet fire safety and life safety measures under the Ohio and Montgomery County Building Codes, and continues to operate in violation of the Township's zoning. The Ohio Revised Code defines "agritourism" as an "agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity." R.C. § 901.80. It appears to Plaintiff that Defendants agriculture use of the structure, if such even truly exists, is merely incident to the wedding venue as a way to avoid regulation, instead of

using the structure in a manner that is incident to an agricultural use for which agritourism was intended for.

In their Motion in Opposition, Defendants go through the November 18, 2020, deficiency letters issued to each Defendant line by line, and while Plaintiff believes that those letters still speak for themselves, Plaintiff will respond in kind.

a. Darren Powlette's Responses¹

In response to Deficiency No. 1, Defendant asserts that he makes “no income” as a result of hosting weddings at the wedding venue. This seems preposterous, as he has produced contracts that indicate otherwise. These contracts indicate that Defendants charge in the thousands of dollars to host weddings and other events, but Defendants assert that they have no income. In furthering attempts at a response, Plaintiff defined “income” as “money that an individual or business receives, usually in exchange for providing a good or service.” (See Motion to Compel Exhibit 9.) Based on this definition, Mr. Powlette still asserts no income is made, yet this seems improbable, and as such Plaintiff is entitled to review Mr. Powlette's financial records in an effort to determine if Defendants' use is in fact incident to agriculture. Plaintiff has a right to see how much income is being generated from event hosting verses agriculture.

In response to Deficiency Nos. 2 and 8, Defendants state that they provided *all information in their possession*. What Defendants provided was contracts with *no* contact information for the renting parties. It seems incredibly odd that an entity would enter into a contract with an individual but keep no records of how to contact the renting individual(s) for payment or regarding details of the event. This leads Plaintiff to question the veracity of the

¹ For reference Plaintiff generally directs the Court to Plaintiff's Motion to Compel Exhibit 9, as it responds to Defendants Motion in Opposition as directed to Darren Powlette.

Defendants response, as this seems like an attempt to prevent Plaintiff from deposing these individuals and uncovering additional relevant and discoverable information that would disprove Defendant's claims that its venue is operated "incident to agricultural." Defendants' contention that Plaintiff's request for customer information is made to "threaten" and "scare" Defendants, along with their request for a bond, is laughable, as Defendants state they make "no income" from the property, as such how could they have damages related to "income"? Plaintiff has a right to depose these individuals, or to have them testify, if Plaintiff finds that no agriculture was a part of, or related, to the events these individuals hosted at the venue.

In response to Deficiency No. 3, Defendants provided a non-answer to the question of how the property is farmed, or what crops are grown or harvested. Plaintiff further defined these terms to allow the Defendants to further understand the question, however, Defendants essentially danced around the question by vaguely citing to the Ohio Revised Code, without even providing as little as a specific section for reference or support of their position. Again, this would allow the Plaintiff to determine whether this venue is in fact run incident to agriculture.

In response to Deficiency No. 4, Defendants cannot seriously be contending that their provision of records which may be publicly available is in anyway a courtesy, which should relieve them of providing discovery.

In response to Deficiency Nos. 5, 6, 10, 12, 14, and 15, Defendants state that they have continually failed to produce their tax returns because of as of January 5, 2021, because such are not finalized or have not been prepared. Defendants either have tax returns or they did not file any. This is not a hard question to answer. Plaintiff asked for tax returns for 2015 to present. Is Plaintiff to believe that no Defendant to this action has filed tax returns for the preceding *five*

years? Additionally, Plaintiff asked for several specific tax forms related to *farming* income, which upon information and belief, farmers would typically file with the government.

In response to Deficiency Nos. 7 and 9, Defendants assert that they have produced all agreements for the requested events, however, Plaintiff has reason to believe that more events occurred than Defendants provided rental/lease agreements for. Defendants state that they have searched their records and cannot locate any documents which are further responsive to Plaintiff's request. In addition, Defendants state they do not "operate a venue," and that there "is a barn on his property and the property occasionally hosts an event(s)." Plaintiff has the right to discover what costs or expense Defendant incurs as a result of operating this venue, and while Defendants argue they do not "operate" the venue, they also do not state that they have "no expenses" because they do not operate the venue, they just object to providing any records, which Plaintiff believes exist.

In Response to Deficiency Nos. 11 and 13, Plaintiff has yet to provide any insurance information, save for the company their policy is through. This information would allow Plaintiff to see how Defendants insure the property and whether they insure any crops that they claim to grow, as Plaintiff understands to be customary in farming. These documents would be illustrative as to how the Defendants view the property and venue.

b. Stone Hill Rustic Weddings' Responses²

Defendants note that:

many, if not most, of the discovery requests submitted to Stoney Hill separately were previously submitted to Darren Powlette, which under the Plaintiff's definition of "You" could include Stoney Hill (and vice versa). Nonetheless, Defendant Stoney Hill provided separate responses to Plaintiff's redundant and duplicative requests.

² For reference Plaintiff generally directs the Court to Plaintiff's Motion to Compel Exhibit 10, as it responds to Defendants Motion in Opposition as directed to Stoney Hill.

Plaintiff has treated the Defendants as two separate entities, however, it appears that Defendants seem to concede that they share records and a discovery request to one Defendant is the same as a discovery request to both Defendants, which makes the Defendants' individual responses and objections to the Plaintiff's request all the more perplexing. Plaintiff would specifically call to the Court's attention that this brings up the question of income and taxes, as Defendants seem to assert they make "no income" and do not file taxes.

In response to Deficiency No. 1, Defendants contend that a "narrative response" is called for, however, this is not the case. Plaintiff provided specific definitions in response to the underlying interrogatory after Defendants objected to terms within the interrogatory being vague. Despite Plaintiff's best efforts, Defendants continue to be evasive in their responses as they simply seek to not answer the interrogatory and wish to continue to frustrate the proceedings of this Court as well as the discovery process as a whole in an attempt to stonewall the proceedings as to stall Plaintiff's case.

In response to Deficiency Nos. 2 and 9, Plaintiff reincorporates its response to Powlette Deficiency Nos. 2 and 8.

In response to Deficiency Nos. 3, 12, and 14, Plaintiff reincorporates its response to Powlette Deficiency Nos. 11 and 13. Plaintiff further notes that Defendants' responses to this are vague and include claims of what the Defendants "will do" but have already failed to do. Additionally, Defendants' failure to respond to the Plaintiff's discovery requests continues to delay the progress of this case to trial.

In response to Deficiency No. 4, Plaintiff reincorporates its response to Powlette Deficiency Nos. 1, 2, and 8.

In response to Deficiency No. 5, Plaintiff reincorporates its response to Powlette Deficiency No. 4.

In response to Deficiencies Nos. 6, 7, 8, 11, reincorporates its response to Powlette Deficiency Nos. 13, 5, 6, 10, 12, 14, and 15.

In response to Deficiency No. 10, reincorporates its response to Powlette Deficiency Nos. 7 and 9.

II. CONCLUSION

For the foregoing reasons, Plaintiff Miami Township Board of Trustees requests that Defendants be ordered, by this Court, to respond to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and that Defendants be ordered to pay the reasonable costs of preparation and filing if this motion.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2021, a copy of the foregoing Motion to Compel was served via the Montgomery County e-filing system on all registered parties of record and via U.S. First Class Regular mail on parties not registered as e-file system users.

/s/ Edward J. Dowd
Edward J. Dowd (0018681)